

E-Filed 9/2/2009

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

BAHMAN M. GHANI,

Plaintiff,

v.

LOCKHEED MARTIN SPACE SYSTEMS
COMPANY, and DOES 1 through 20, inclusive,

Defendants.

Case Number C 08-2120 JF (PVT)

ORDER¹ GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

[re: doc. no. 25]

Defendant Lockheed Martin Corporation ("Lockheed Martin") moves for summary judgment on the claims of Plaintiff Bahman M. Ghani ("Ghani") for breach of an implied contract to terminate his employment only for good cause, tortious interference with prospective economic advantage, and violation of Cal. Labor Code § 1050 *et seq.* For the reasons set forth below, the motion will be granted.

I. BACKGROUND

The following relevant facts are undisputed unless otherwise noted. Ghani was an aerospace engineer at Lockheed Martin from 1980 until his termination in June 2007. Ghani

¹ This disposition is not designated for publication in the official reports.

Decl. ¶ 2. Ghani's initial offer of employment was silent with respect to whether his employment was at-will. *See id.*; Ghani Decl. Ex. A. Since at least 1997, Lockheed Martin has published an employment policy on its website, which policy provides in relevant part that "[e]mployment with Lockheed Martin can be terminated at any time with or without cause by either the employee or Lockheed Martin." Meccariello Decl. Ex. A at 2. *See also* Ghani Decl. ¶ 3.

A. Events Leading to Termination

In 2004, Ghani was promoted to Manager of Flight Data Collection and Processing Ops, a position he held until his termination. *See* Ghani Decl. ¶ 19. During the relevant period, Ghani reported to Chris Agler ("Agler"), Senior Manager of the Flight Test and Evaluation Group. *See id.* In August 2006, Ghani hired Randy Finch ("Finch") into the department. At the time of his hire, Finch was scheduled to be laid off from another department within Lockheed Martin after being with the company for fifteen years. *Id.* ¶ 21; Foster Decl. Ex. A at 95. Finch was the son-in-law of Bob Hall, a former co-worker of Ghani, and Ghani and Hall were friends, at least in the workplace. *See* Ghani Decl. ¶ 21; Foster Decl. Ex. F at 61. The parties do not dispute that Finch was the only applicant and that he was hired into an unposted position. *See* Foster Decl. Ex. A at 96. In addition, while it is Lockheed Martin's business practice to have new hires cleared with department heads, and Ghani did not "recall" asking for permission to hire Finch, Ghani technically had the authority to make the appointment. Ghani Decl. ¶ 11; Foster Decl. Ex. B at 23.

In October 2006, shortly after being hired into Ghani's group, Finch began a series of extended absences related to an issue with a family member. Ghani Decl. ¶ 22; Foster Decl. Ex. A at 103, Ex. F at 28-29. At first, Finch used his available vacation and sick leave, but after Finch exhausted those allotments, Ghani suggested an alternative. As Finch explained during his deposition:

Q: When you requested the personal time, did you have an understanding as to how your timecard would be coded?

A: I was using I guess vacation and whatever I had, I believe, is what they did first. And then after that, [Ghani] said he could help,

1 and I don't know what the code was but he said there was a code
2 that's for this.

3 Foster Decl. Ex. F at 20-21. Ghani used a code referred to as "PERS," which is "used to record
4 an authorized absence that allows an employee to take care of personal business." *See* Foster
5 Decl. Ex. A at Ex. L, at 2. *See also* Ghani Decl. ¶ 25. This category of absenteeism also is
6 known as "incidental leave," and allows the employee to take paid leave for days that are coded
7 as PERS. *See* Foster Decl. Ex. A at Ex. O §§ 4.1-4.13. Any time that is coded as PERS is
8 included in allowable overhead and thus is charged indirectly to Lockheed Martin customers. *Id.*
9 Ex. D at 34-35.

10 From October 16, 2006 until the termination of his employment on May 15, 2007, Finch
11 largely was absent from the workplace. *See* Foster Decl. Ex. F at 54. Lockheed Martin contends
12 that Finch received eight months of full compensation during this period, without proper
13 authorization and without performing his job. It is undisputed that between October 16, 2006
14 and December 31, 2006, Finch's absences were coded as follows: 240 hours of PERS, which
15 was equivalent to thirty days paid leave; forty hours of paid bereavement leave; fifty-six hours of
16 paid vacation; fifty-six hours of paid holiday time; and seventy-two hours of paid sick leave. *Id.*
17 at Ex. F at Exs. A & B. From January 1, 2007, to May 11, 2007, Finch's absences were coded as
18 480.5 hours of PERS (equivalent to sixty days paid), with the final five days later corrected by
19 Agler to unpaid time; 145.5 paid vacation hours; and eighty hours of paid sick leave, for a total
20 of 666 paid hours. *Id.*; Foster Decl. Ex. A at 134. Ghani approved the time codes and Finch's
21 absence, and for almost all of the days Ghani entered the time codes personally. *See* Ghani Decl.
22 ¶¶ 22, 24-25. In addition, the majority of the days worked by Finch in 2007 were done at his
23 home with Ghani's approval. *See* Foster Decl. Ex. F at 56-57.² Regarding his failure to keep in
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25 ² Finch testified that throughout this time frame, he was unable to work as a result of
26 severe emotional distress that became progressively worse. *See, e.g.,* Foster Decl. Ex. F at 28-29.
27 According to Lockheed Martin, Ghani's failure to report Finch's absences or the personal
28 problems underlying the absences prevented the company from offering any assistance to Finch
under various employee assistance programs. *See* Meccariello Decl. ¶ 6. However, Finch's
testimony reflected that there had been some lack of success with those alternatives. Foster Decl.
Ex. F at 53-54.

1 contact with Finch during this period, Ghani testified:

2 Q: Didn't hear from [Finch] at all during the month of April,
3 correct?

4 A: I did not. That's correct. I wasn't in the office all the time. I
5 was, you know, working on projects and stuff, so I did not pursue
6 him to find out where he was. You know, I lost track of time
7 working on that.

8 Foster Decl. Ex. A at 126.

9 Ghani acknowledges that he fully understood that his use of the PERS code allowed
10 Finch to collect full pay. *See* Ghani Decl. ¶¶ 29-30. Ghani's apparent basis for the use of the
11 PERS code was Lockheed Martin's Corporate Policy Statement 534, which sets forth guidelines
12 governing an employee's "Absence From Work" (the "AFW Policy"). *See* Foster Decl. Ex. A at
13 106 & Ex. O. *See also* Ghani Decl. ¶¶ 25-30. The AFW Policy describes the applicable
14 procedures for various types of absences authorized by Lockheed Martin, including Personal
15 Leave, Family and Medical Leave, Incidental Absence, and various forms of disability leaves.
16 *See* Foster Decl. Ex. A at 106 & Ex. O. Ghani believed that the provisions set forth in § 4 of the
17 AFW Policy, which contains the Incidental Absence provisions, governed Finch's situation.³ *See*
18 Ghani Decl. ¶¶ 26-29. As stated in the AFW Policy, an "Incidental Absence" may be granted
19 when time away from work is required for "personal business that cannot be conducted outside
20 of regularly scheduled work hours...Doctor's appointments...[or] illness or injury...that is not
21 Family and Medical Leave Act (FMLA)-qualified and doctor's appointments." Foster Decl. Ex.
22 A at Ex. O § 4.1. Absences under this category are approved by an employee's "immediate
23 manager" and may be taken for a "maximum of seven consecutive full or partial calendar days
24 for each approved absence." *Id.* §§ 4.11, 4.12. In addition, "[t]he absence may be paid or
25 unpaid. Generally, you will be paid for a reasonable number of Incidental Absences. The

26 ³ Ghani does not appear to argue that § 10 of the AFW Policy could have applied to
27 Finch's situation. That section covers "Personal Leave," and allows such leave to be taken for up
28 to one year. Foster Decl. Ex. A at Ex. O § 10.4. However, leave under this category is unpaid,
and it is undisputed that Finch was paid for almost all of the days he was absent. In addition,
Personal Leave would have required prior approval by Lockheed Martin's human resources
department. *Id.* § 10.3.

1 number of Incidental Absences, however, is not unlimited.” *Id.* § 4.13. Ghani believed that he
2 only had to notify human resources in case he did not approve the Incidental Absence without
3 pay, as set forth in § 4.14 of the AFW Policy. *See* Ghani Decl. ¶ 29. Ghani further believed that
4 the PERS code, as it was defined in Lockheed Martin’s attendance codes for salaried employees,
5 was the appropriate code for Finch’s Incidental Leave. *Id.* ¶ 34.

6 According to Lockheed Martin, employees charge the actual hours that they have worked
7 to the corresponding government project, while overhead costs, vacation, sick leave, and
8 personal paid leave are distributed across all of Lockheed Martin’s customer contracts, including
9 U.S. Government contracts. Meccariello Decl. ¶ 2; Foster Decl. Ex. D at 33; *Id.* Ex. J at 41.
10 Lockheed Martin maintains that proper time coding is required by law, even for overhead
11 charges, and therefore proper practices are emphasized in company policies and training.
12 Meccariello Decl. ¶ 2. *See also* Foster Decl. Ex. J at 39-41 (“mischarging is theft from the
13 Customer and Lockheed Martin,” even where it involves overhead-related time keeping).
14 Lockheed Martin also states that mischarging of time may result in suspension or even debarment
15 from its status as a U.S. Government contractor, subjecting the company to liability under the
16 Civil False Claims Act. Meccariello Decl. ¶ 2.⁴ Lockheed Martin has submitted un rebutted
17 evidence that there is little tolerance for miscoding of time, in that if an allegation of mischarging
18 is substantiated following an investigation by the human resources department, termination of
19 employment is the recommended discipline, irrespective of the amount time involved or the
20 length of the employee’s tenure with the company. *See* Foster Decl. Ex. E at 39; *Id.* Ex. I at 37-
21 38; *Id.* Ex. J at 36-37. Indeed, during 2006 and 2007 alone, Lockheed Martin terminated the
22 employment of at least sixteen people (not including Ghani) for mischarging, four of whom had
23 more than twenty years with the company, some for incidents of miscoding involving fewer than
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25 ⁴ There is no actual dispute that the correct charging of time was a essential part of
26 Ghani’s job. During his deposition, Ghani testified that (1) “charging time correctly” is a core
27 job requirement; (2) the requirement that employees charge time correctly was discussed in the
28 company’s annual ethics training; (3) Ghani attended labor charging training in 2006 and 2007;
(4) as a manager, it was Ghani’s responsibility to make sure that his direct reports accurately
reported all time charges; and (5) mischarging may affect Lockheed Martin’s relationship with
the U.S. Government. *See* Foster Decl. Ex. A at 78-82.

1 six days. *See* Meccariello Decl. ¶ 3.

2 B. Lockheed Martin's Investigation and Ghani's Termination

3 On May 7, 2007, Agler met with Ghani to discuss various issues involving Ghani's job
4 performance, including an allegation by several of Ghani's subordinates that they felt Ghani had
5 been absent from the workplace too frequently because of travel responsibilities. *See* Foster
6 Decl. Ex. A at 129; *Id.* Ex. B at 70. At that meeting, Ghani informed Agler that he was
7 considering the possibility of stepping down from his manager position. Ghani Decl. ¶ 37. The
8 next day, Ghani voluntarily stepped down as manager, as he believed his skills were better suited
9 to field work than to administrative tasks. *See id.* Ghani's decision made Agler the direct
10 supervisor of Finch. *See* Foster Decl. Ex. A at 128. On May 9, 2007, Ghani first told Agler that
11 he had not heard from Finch. *See id.* at 126. In fact, at this point Ghani had not received any
12 communication from Finch since March 27, 2009, and Finch had failed to respond to two emails
13 sent by Ghani in April 2007. *Id.* at 126-127. It is undisputed that Ghani did not discuss Finch's
14 requests for time off with Lockheed Martin's human resources department, nor did he ask the
15 human resources department what time code should be used for Finch's absences. *See id.* at 137-
16 39.

17 Prior to these discussions with Ghani, Agler had believed that Finch had been granted a
18 leave of absence. *See* Foster Decl. Ex. B at 44. When informed by Ghani that Ghani had used
19 the PERS code for a period in excess of seven consecutive days, Agler asked if Ghani had
20 secured approval for such action. *Id.* at 45-46. When Ghani informed Agler that such approval
21 had not been obtained, Agler then met with a representative in Lockheed Martin's human
22 resources department to discuss the situation. In particular, Agler was concerned that Finch had
23 been absent from work for an extended period of time and that Ghani apparently had miscoded
24 the time. *See* Meccariello Decl. Ex. B at LM 125. Agler also corrected forty hours of time in
25 Finch's most recent pay period from PERS to LSTU (lost time/unpaid), which is not charged to
26 customers. *Id.*; Foster Decl. Ex. B at 57. Finch was terminated shortly thereafter for abandoning
27 his job. Meccariello Decl. Ex. B at LM 125.

28 Lockheed Martin then assigned Ryan Keyt ("Keyt") to investigate Ghani's alleged

1 miscoding. Foster Decl. Ex. H at 19-20. During his deposition, Keyt testified that he had
 2 investigated approximately ten to fifteen incidents of mischarging in the five years prior to the
 3 incident in question. Mezzetti Decl. Ex. A at 11. As part of his investigation, Keyt conducted
 4 in-person interviews with Ghani and Agler and reviewed Ghani's personnel file. Foster Decl.
 5 Ex. H at 26, 33, 49. Ghani also submitted a written statement as part of the investigation, which
 6 included the following:

7 I reviewed the time charging command media and realize now that
 8 I had misunderstood the description and guidelines for the PERS
 9 time code...I did bring the direct report's family crisis to my Sr.
 10 Manager's attention but the time coding did not come up in our
 11 discussions. The last email I received from the direct report was
 12 26 March 2007 and the last telecom was on 27 March advising me
 13 he need [sic] two more weeks to resolve most of the family crisis
 14 and return to work...I regret the misunderstanding and impact that
 15 it has caused. I have begun a corrective action to thoroughly
 16 review all time charging command media to prevent any recurrence
 17 of this or any kind. In hindsight, I should have obtained guidance
 18 from my Sr. Manager and HR on how to proceed in this situation.
 19 My only intention was the overall well being of [Finch] in enabling
 20 him to concentrate on his family crisis and get back to work as
 21 soon as possible. Again, I believed at the time I was proceeding
 22 properly and truly regret my mistake.

23 Meccariello Decl. Ex. B at LM 127.

24 By May 17, 2009, Keyt had completed his investigation and had prepared a written
 25 report. *See* Meccariello Decl. Ex. B at LM 117. The report listed two specific allegations of
 26 misconduct: (1) "Minor Mischarging-Inappropriate approval of excessive paid personal time;"
 27 and (2) "Management Practice and Performance-Inappropriate application of policy and failure
 28 to appropriately manage." *Id.* at 118.⁵ At his deposition, Ghani testified that the facts underlying
 the relevant allegations of misconduct had been described accurately in Keyt's report. *See* Foster
 Decl. Ex. A at 125-26, 133-36. The results of Keyt's investigation then were presented to
 Lockheed Martin's Administrative Review Committee ("ARC"), which ultimately recommended
 that Ghani be terminated. *See* Meccariello Decl. Ex. B at LM 115. The parties dispute whether

⁵ At his deposition, Keyt testified that he used the term "minor" to characterize the
 miscoding because Ghani had coded the time for another employee, rather than himself. Foster
 Decl. Ex. G at 127-28. However, in terms of the actual misconduct, Keyt considered the incident
 to be relatively severe due to the number of hours involved. *See* Mezzetti Decl. Ex. A at 12.

certain individuals should have been members of the ARC, as well as who was involved in the ultimate decision to terminate Ghani, but for purposes of resolving the instant motion the Court must treat Ghani's factual allegations as true. Accordingly, it is unnecessary to recount any additional details relevant to the investigation. As a result of his termination, Ghani's security clearance for U.S. Government contracts was suspended. *See* Ghani Decl. ¶ 46.

C. Events Subsequent to Termination

In July 2007, Ghani was contacted by L3 Communications ("L3C") about a possible position with the company. *See* Ghani Decl. ¶ 45. Ghani informed L3C about his termination from Lockheed Martin in an email dated July 21, 2007:

Here is summary of what happened:

An employee working for me had a personal family crisis that required his taking time to resolve. I, unaware of the limitations of the timecard code for taking personnel [sic] time, incorrectly coded him for many weeks. Since I thought I was acting correctly, I did not inform HR of his situation. HR investigated and decided that I had acted improperly and terminated me. If I had known of the timecode limitations, I would have proceeded differently.

Foster Suppl. Decl. Ex. A.⁶ On August 20, 2007, LC3 extended an offer to Ghani, contingent upon Ghani securing an appropriate security clearance. *See* Ghani Decl. ¶ 45. In September 2007, LC3 informed Ghani that his prior security clearance could not be transferred because it had been suspended. *Id.* ¶ 46. L3C subsequently rescinded its offer of employment. *See id.*

On September 14, 2007, Ghani received an offer of part-time employment from his present employer, Trident Research LLC ("Trident"). *See* Ghani Decl. ¶ 52. Ghani's part-time salary was less than half of what his salary would have been at LC3 had he been hired. *See id.* ¶¶ 45, 52. Ghani eventually was offered a full-time position with Trident, after undergoing a complete security background check and receiving a new security clearance. *See* Starceovich

⁶ Ghani objects to Lockheed Martin's submission of a supplemental declaration in support of its reply brief on the ground that such evidence should have been submitted in conjunction with the opening brief. However, Civ. L.R. 7-3(c) permits the submission of affidavits or declarations with a reply brief, and at least the portions relevant to the resolution of the instant motion were submitted in response to arguments made in Ghani's opposition. *See* Fed. R. Civ. P. 56(e)(2).

Decl. Ex. I at 46-48; Ghani Decl. ¶ 55.

II. LEGAL STANDARD

Summary judgment should be granted only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The moving party bears the initial burden of informing the court of the basis for the motion and identifying the portions of the pleadings, depositions, or other evidence that demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party meets this initial burden, the burden shifts to the non-moving party to present specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324. Once the moving party meets this burden, the nonmoving party may not rest upon mere allegations or denials, and instead must present evidence sufficient to demonstrate that there is a genuine issue for trial. *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001). A genuine issue for trial exists if the non-moving party presents evidence from which a reasonable jury, viewing the evidence in the light most favorable to that party, could resolve the material issue in his or her favor. *Anderson*, 477 U.S. 242, 248-49.

III. DISCUSSION⁷

A. At-Will Employment and Implied Agreement to Terminate only for Good Cause

Under California law, and in the absence of any agreement to the contrary, a term of employment may be terminated at any time, with or without cause. *See* Cal. Labor Code § 2922 (“An employment, having no specified term, may be terminated at the will of either party on notice to the other.”); *Guz v. Bechtel Nat’l, Inc.*, 24 Cal. 4th 317, 335 (2000) (“An at-will employment may be ended by either party ‘at any time without cause,’ for any or no reason, and subject to no procedure except the statutory requirement of notice.”). The statutory presumption created by § 2922 may be altered contractually by either an express or an implied agreement.

⁷ Because this Court’s subject matter jurisdiction is based on diversity of citizenship between the parties, the substantive law of the forum state governs the instant dispute. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

1 *Guz*, 24 Cal. 4th at 335-336 (“though Labor Code section 2922 prevails where the employer and
2 employee have reached no other understanding, it does not overcome their
3 ‘fundamental...freedom of contract’ to depart from at-will employment. The statute does not
4 prevent the parties from agreeing to any limitation, otherwise lawful, on the employer’s
5 termination rights.”) (citing *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 680, 696 (1988)).

6 Ghani first argues that because he never signed any agreement expressly designating that
7 his employment was at-will, Lockheed Martin could terminate him only for good cause.
8 However, in the absence of any agreement to the contrary, the default rule is that employment is
9 at-will, and thus in such circumstances there is no obligation than an employer show good cause
10 prior to termination. *Foley*, 47 Cal. 3d at 680 (“Pursuant to Labor Code section 2922, if the
11 parties reach no express or implied agreement to the contrary, the relationship is terminable at
12 any time without cause.”). Ghani also argues that certain events led him to believe that there was
13 an implied agreement to terminate only for good cause. An implied contractual agreement to
14 terminate only for good cause may arise “from the parties’ conduct evidencing their actual
15 mutual intent to create such enforceable limitations.” *Guz*, 24 Cal. 4th at 336. The existence of
16 an implied contract is a question of fact. *See id.* at 677. Relevant factors in the determination of
17 whether such an implied agreement existed include “the personnel policies or practices of the
18 employer, the employee’s longevity of service, actions or communications by the employer
19 reflecting assurances of continued employment, and the practices of the industry in which the
20 employee is engaged.” *Id.* at 680 (quoting *Pugh v. See’s Candies, Inc.*, 116 Cal. App. 3d 311,
21 327 (1981)).

22 With respect to the first *Pugh* factor, it is undisputed that the policies posted on Lockheed
23 Martin’s intranet at all times relevant herein stated that employment at Lockheed Martin was at-
24 will. *See* Meccariello Decl. Ex. A at 2. *See also id.* at 4 (termination may be “immediate[]” and
25 without any corrective procedures); *id.* at 5 (all salaried employees are employed at-will and
26 employment may be terminated “at any time, with or without cause, and with or without
27 notice.”); *id.* at 6 (“initial discipline” may include termination). At his deposition, however,
28 Ghani testified that he had not viewed any of these policy statements. Starceovich Decl. Ex. J at

59. He also testified that he had never discussed with Lockheed Martin whether his employment was at-will or whether good cause was required for termination. *Id.* at 61-63.

The second *Pugh* factor, longevity of service, supports the existence of an implied agreement. As to the third factor, Ghani admitted during his deposition that Lockheed Martin never made an express promise that he would be terminated only for good cause:

Q: Did anyone at Lockheed Martin Corporation ever tell you that the company's at-will statements or at-will policies did not apply to your employment at the company?

A: I never had discussions about that with anybody.

Q: So the answer would be no?

A: No.

Q: Okay. Have you ever discussed the concept of termination for good cause with anyone at Lockheed Martin Corporation?

A: No.

Q: Did anyone at Lockheed Martin Corporation ever tell you that you were guaranteed to be employed at the company for a specific period of time, or words to that effect?

A: That it was guaranteed?

Q: Yes.

A: No.

Starcevich Decl. Ex. J at 62. Instead, Ghani testified his positive performance reviews created an implied agreement:

I mean I guess it was just that I had done a good job and, therefore, I had a future with Lockheed, is the way it was stated. Because I performed well, and they liked what I did, and, therefore, it was implied that, you know, they would promote me and give me raises and stuff to work there.

Id. at 64-65. Ghani contends that his generally positive performance reviews were signals by Lockheed Martin that "implied" an agreement to terminate only for good cause. *See id.* at 65-66 ("good performance reviews, and raises and promotions" constituted "implied signals that I was doing a good job and, therefore, I would keep having a job there.").

1 To the extent that longevity and promotions may support the existence of an implied
 2 agreement, such events, without more, are insufficient under California law to alter the statutory
 3 presumption created by § 2922. *See Guz*, 24 Cal. 4th at 341-42 (“an employee’s mere passage of
 4 time in the employer’s service, even where marked with tangible indicia that the employer
 5 approves the employee’s work, cannot *alone* form an implied-in-fact contract that the employee
 6 is no longer at will.”). Otherwise, an implied agreement to terminate only for good cause could
 7 be created simply by an employee doing his or her job, a rule that is not contemplated by § 2922
 8 or by any of Lockheed Martin’s employment policies. *See id.* (“A rule granting such contract
 9 rights on the basis of successful longevity alone would discourage the retention and promotion of
 10 employees.”). *See also Carter v. CB Richard Ellis, Inc.*, 122 Cal. App. 4th 1313, 1329 (2004)
 11 (“longevity, raises and promotions are their own rewards for the employee’s continuing valued
 12 service; they do not, in and of themselves, additionally constitute a contractual guarantee of
 13 future employment security.”) (quoting *Guz*, 24 Cal. 4th at 342). Nor does the existence of
 14 certain policies governing employee discipline change Ghani’s employment status. *See Davis v.*
 15 *Consol. Freightways*, 29 Cal. App. 4th 354, 367 (1994) (discipline policy did not change at-will
 16 status because otherwise “an employer would be forced purposely to terminate employees for any
 17 and every infraction-or none at all-in order to maintain the presumption of at-will employment.
 18 The law does not require such caprice to avoid creating an implied in fact contract.”); *Anderson*
 19 *v. Union Pac. R.R. Co.*, No. S-06-2813, 2008 WL 2130320, at *7 (E.D. Cal. May 21, 2008) (“the
 20 existence of a disciplinary process does not rebut the presumption of at-will employment
 21 status.”). Finally, no evidence has been presented as to standard industry practices. Under all the
 22 circumstances, the Court concludes that there was no implied agreement between the parties that
 23 altered Ghani’s at-will status.

24 Because it is undisputed that Lockheed Martin made no statements that reasonably could
 25 have been construed to create a “specific understanding” that Ghani could be terminated only for
 26 good cause, *see Guz*, 24 Cal. 4th at 342, summary judgment in favor of Lockheed Martin is
 27 appropriate. *See Eisenberg v. Alameda Newspapers, Inc.*, 74 Cal. App. 4th 1359, 1386 (1999)
 28 (where the relevant facts are undisputed, the existence of an implied agreement to terminate only

1 for good cause may be adjudicated as a matter of law).⁸

2 B. Miscoding Constituted Good Cause

3 Even if there were a triable issue of fact as to the existence of an implied agreement,
 4 Ghani still would have to show that Lockheed breached that agreement. *See Moreau v. Air*
 5 *France*, 356 F.3d 942, 954 (2004) (“To succeed on his claim, [the former employee] had to prove
 6 not only that there was an implied-in-fact contract, but also that Air France breached that
 7 agreement.”). Ghani contends that the investigation was inadequate and that his termination thus
 8 was improper. An employee may be terminated for good cause where there is a “factual basis on
 9 which the employer concluded a dischargeable act had been committed reached honestly, after an
 10 appropriate investigation and for reasons that are not arbitrary or pretextual.” *Cotran v. Rollins*
 11 *Hudig Hall Int’l., Inc.*, 17 Cal. 4th 93, 107 (1998). *See also Miller v. United Parcel Serv., Inc.*,
 12 No. C 03-2405, 2004 WL 1771571, at *13 (N.D. Cal. Aug. 6, 2004) (“Under the rule articulated
 13 in *Cotran*, the question is ... [whether the employer] has provided undisputed evidence that the
 14 decision to terminate plaintiff was objectively reasonable and arrived at honestly and in good
 15 faith after a fair and appropriate investigation.”). Specifically, Ghani attacks his termination on
 16 the ground that the ARC’s decision was arbitrary, but his conclusory argument is refuted by
 17 undisputed evidence to the contrary.⁹ The record shows that Lockheed Martin investigated the
 18 incident, that Ghani had a full and fair opportunity to explain his version of the relevant events
 19 and the basis of his misunderstanding of the relevant policies, and that he admitted the alleged
 20 wrongdoing. Such circumstances demonstrate that there was an adequate investigation as a

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 22 ⁸ Ghani’s reliance on *Reid v. Smithkline Beecham Corporation*, 366 F. Supp. 2d 989 (C.
 23 D. Cal. 2005) is unavailing. In *Reid*, the plaintiff survived a motion summary judgment on her
 24 claim of breach of an implied agreement to terminate only for cause because she testified that
 25 express promises had been made as to a good cause requirement. *See id.* at 995 (“Plaintiff
 ...declared, under the penalty of perjury, that she was expressly told by her supervisors that she
 would not be terminated without cause.”). *See also Guz*, 24 Cal. 4th at 342.

26 ⁹ Ghani’s statements in his declaration in support of his opposition to the instant motion
 27 contradict statements made during the investigation, as well as his admission during his
 28 deposition that he did not code Finch’s time correctly. Ghani’s argument that he was pressured
 to admit his mistake is tempered by the fact that he affirmed the accuracy of the allegations
 during his deposition, after he had lost his job. *See Foster Decl. Ex. A* at 134-36.

1 matter of law. *See King v. United Parcel Serv., Inc.*, 152 Cal. App. 4th 426, 440 (2007)
 2 (“Because neutral personnel investigated the facts, eyewitnesses provided statements, and
 3 plaintiff was given an opportunity to explain what happened, we conclude UPS conducted an
 4 adequate investigation as a matter of law.”).¹⁰

5 To the extent that Ghani is alleging that his termination was improper because Lockheed
 6 did not follow its own discipline policy to the letter, such an allegation does not affect the
 7 ultimate disposition. The undisputed evidence shows that Lockheed had the right to terminate
 8 Ghani. Ghani testified that he reviewed the provision in the AFW Policy limiting an Incidental
 9 Absence to seven consecutive days or less, and that he reviewed the relevant codes and selected
 10 “PERS” code to categorize many of Finch’s absences. *See Foster Decl. Ex. A* at 106-07.
 11 Nonetheless, Ghani testified that, despite the time limit language, Finch was eligible for
 12 additional PERS coding if he made an additional request for more time during the first seven
 13 days of an absence. *Id.* at 107-109. Not only does this reading of the AFW Policy eviscerate the
 14 seven-day limitation rule, but also the fact that Finch and Ghani had no contact at all for the final
 15 six weeks of Finch’s absence belies Ghani’s *ex ante* interpretation.¹¹ Nor may Ghani seek
 16 selective enforcement of certain portions of company policies when there are other policies that
 17 give Lockheed Martin the unequivocal right to terminate him without good cause.

18 Finally, Ghani contends that the mere possibility that Lockheed *might* have imposed a
 19 lesser punishment *if* a more thorough investigation had been conducted or if the ARC process
 20 had been flawless precludes summary judgment. California law provides otherwise. *See Pugh v.*
 21 *See’s Candies, Inc.*, 203 Cal. App. 3d 743, 769 (1988) (“In any free enterprise system, an
 22 employer must have wide latitude in making independent, good-faith judgments about
 23

24 ¹⁰ It is worth emphasizing that Ghani does not contest the facts surrounding Finch’s
 25 extended absences, but rather that Ghani had the right to approve such absences and code them as
 PERS.

26 ¹¹ At least several other codes on Lockheed Martin’s coding list might have been more
 27 appropriate for categorizing Finch’s absences, including FMIP (FMLA -Paid Intermittent),
 28 FMLP (short term care for kin), and FMLU (unpaid FMLA leave). Personal leave under § 10 of
 the AFW Policy also could have been used, but as discussed previously such leave would have
 been unpaid and would have required prior approval from the human resources department.

high-ranking employees without the threat of a jury second-guessing its business judgment.”). In effect, Ghani is asking that a jury be allowed to reevaluate facts that clearly were sufficient to support his termination. Ghani may have been merely careless and may have had the best of intentions with respect to his subordinate who was under considerable distress, but such considerations ultimately are immaterial to the concerns faced by a defense contractor that depends upon proper time coding. *See id.* Accordingly, Lockheed Martin’s motion will be granted with respect Ghani’s claim for breach of the implied agreement to terminate only for good cause.

C. Intentional Interference with Prospective Economic Advantage

Under California law, a claim for intentional interference with prospective economic advantage requires: “(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant’s knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant.” *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1154 (2003). In addition, the alleged misconduct must have been “wrongful by some legal measure other than the fact of interference itself.” *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, 11 Cal. 4th 376, 393 (1995). “[A]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.” *Korea Supply*, 29 Cal. 4th at 1109.

Ghani’s intentional interference claim is based Lockheed Martin’s disclosure to the U.S. Government of the reason for his termination.¹² Ghani argues that because he was not guilty of misconduct, Lockheed Martin committed libel (*i.e.*, an independently wrongful act) when it informed the government about the reason for his termination. However, as discussed above, Ghani’s miscoding of personnel time was improper, and it constituted misconduct that justified

¹² Ghani also alleges a claim based on Lockheed Martin’s refusal to allow him entry onto the Lockheed Martin campus for a meeting involving his new employer, but in his opposition Ghani concedes that those allegations are inadequate to support his tort claim.

1 the termination. In his deposition, Ghani essentially conceded that the miscoding was improper:

2 Q: All right. I understand, Mr. Ghani that you do not believe you
3 should have been terminated. I get that. That's why we're here.

4 A: Right.

5 Q: But the reason that was communicated to you was misconduct,
6 correct?

7 A: That's what was in the letter. That's correct.

8 Q: And you would agree with me, would you not, that if Ms. Herte
9 communicated to the government only that your employment had
10 been terminated for misconduct, then Ms. Herte provided to the
11 government a true statement, correct?

12 A: That is correct.

13 Foster Supp. Decl. Ex. A at 45. Accordingly, Lockheed Martin could not have defamed Ghani,
14 because the statement it provided to the government was true. *See Hughes v. Hughes*, 122 Cal.
15 App. 4th 931, 936 (2004) (a showing that a statement was "substantially true" constitutes a
16 defense to a defamation claim).

17 In addition, Lockheed Martin argues—and Ghani does not meaningfully dispute—that its
18 communication to the government, even if false, was privileged. Cal. Civ. Code § 47(b) bars any
19 tort actions for defamatory statements made in conjunction with any "official proceeding
20 authorized by law." *Hagberg v. Cal. Fed. Bank FSB*, 32 Cal. 4th 350, 360 (2004) (quoting Cal.
21 Civ. Code § 47(b)). Ghani contends that Lockheed Martin had no duty to report that he had been
22 terminated for misconduct, but this argument conflicts with his own earlier deposition testimony
23 acknowledging that Lockheed Martin was required to report the reason for his termination, *see*
24 Foster Decl. Ex. A at 38-39, as well as documentation indicating that the government required
25 Lockheed Martin to report terminations and, where the termination is due to misconduct, a
26 description of the misconduct. *See Meccariello Decl. Ex. C* at LM 639, LM 772. As argued by
27 Lockheed Martin, any communications were privileged under Cal. Civ. Code § 47(b).¹³

28 ¹³ Moreover, it appears that Lockheed Martin did not inform Ghani's current employer as
to reason for the termination, even when pressed. *See Foster Decl. Ex. C* at 16-17. Perhaps
anticipating the deficiencies in his claim for intentional interference with prospective economic
advantage, Ghani requests leave to amend his complaint to add a claim for negligent interference
with prospective economic advantage. However, for the reasons discussed above, such an

1 This Order has been served upon the following persons:

2 David J. Cardiff dcardiff@fosteremploymentlaw.com, smeyers@fosteremploymentlaw.com

3 Emily R. Epstein eepstein@fosteremploymentlaw.com, smeyers@fosteremploymentlaw.com

4 Margaret Jean Starceвич jean.starceвич@gmail.com, julie_marotta@yahoo.com

5 Michael W. Foster mfoster@fosteremploymentlaw.com, tsmith@fosteremploymentlaw.com

6 Robert Louis Mezzetti , II rob@mezzetilaw.com, jam@mezzetilaw.com